

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 9158 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SARKHEJ OKAF NAGARPALIKA
VERSUS
SOMABHAI BHIKHABHAI THAKORE

Appearance:

MR PARESH UPADHYAY for the Petitioner
MR RR VAKIL for Respondent No.1
MR HH PATEL for Respondent No.2

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 15/08/1999

C.A.V.JUDGMENT

1. The petitioner by this special civil application

is challenging the order of the Director of Municipalities, Gujarat State, Ahmedabad dated 17th November 1997 passed by it in Appeal No.881 of 1997.

2. The facts of the case, in brief, are that the respondent No.1 who is the employee of the petitioner was chargesheeted vide memo dated 19th March, 1997 for the misconduct of remaining unauthorised absent from duty. He filed reply to the chargesheet on 25th March, 1997. On 6th June, 1997, the Inquiry Officer was appointed and Inquiry Officer has expressed his inability to hold the inquiry in the matter and as such the Disciplinary Authority has been given the job of holding the inquiry in the matter and it passed the final order dated 25th June, 1997 under which the respondent No.1 was ordered to be removed from the services. The respondent No.1 has taken up this matter in appeal before the Director of Municipalities, Gujarat State at Ahmedabad, which came to be allowed on 17th November 1997 under the impugned order. Hence, this special civil application before this Court.

Heard the learned counsel for the parties.

3. Earlier the respondent No.1 has come up before this Court in the matter and this court has given direction to the Disciplinary Authority to complete the inquiry within stipulated time. The Director has given one of the the grounds to quash and set aside the order of removing the petitioner from services that the departmental inquiry was not completed within stipulated time as granted by the High Court. I do not find any justification in this approach of the Director. If this Court has given the direction to complete the inquiry within stipulated time and where it is not completed the Departmental inquiry will not vitiate only on this ground. At the most, the petitioner could have made the complaint before the High Court for the non-compliance of its order but the non-compliance thereof could not have been taken to be a ground to grant the relief to the respondent No.1 of reinstatement in the services.

4. The second ground given for interfering in the matter by the Director is that the inquiry was not conducted in consonance with the principles of natural justice. Even if it is taken that the principles of natural justice have not been followed in conducting the inquiry, merely on this ground there could not have been the order of reinstatement of the respondent No.1. In such matter, at the most, direction could have been given to the Disciplinary Authority to hold the inquiry

afresh from the stage where the fault has been found by the authority concerned but this blanket direction to the petitioner to reinstate the respondent No.1 back in service cannot be allowed to stand.

5. The third ground given is that the Chief Officer and the President could not have hold the inquiry and passed the order of punishment. This approach is also arbitrary. The Disciplinary Authority has all right to act as Inquiry Officer also. This dual function can be performed by the Disciplinary Authority to which no exception can be carved out. In this case, the Disciplinary Authority wanted to get this inquiry conducted by the Inquiry Officer but he has shown his unwillingness and it has all the power to hold the inquiry and then pass the order. I find sufficient merits in the contention of the learned counsel for the petitioner that the maxim "Prosecutor cannot be a Judge" is misapplied in the facts of the present case.

6. In the result, this special civil application succeeds and the same is allowed. The order of the Director of Municipalities, Gujarat State at Ahmedabad, dated 17th November, 1997 passed in Appeal No.881 of 1997 is quashed and set aside. The petitioner is directed to hold fresh de novo inquiry in the matter either through himself or other Inquiry Officer and the inquiry has to be completed within a period of two months. The respondent No.1 shall remain under suspension during the period of completion of inquiry. After completion of inquiry in case the petitioner decides to inflict any major penalty upon the respondent No.1 it may also pass the order how to treat the period of suspension of the respondent No.1. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-